IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 29003 of 2005(C)

PETITIONER:

HEMALATHA.V.,
E.NO.276, ACCOUNTANT,
KAMC LTD., KANJICODE, PALAKKAD.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:
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1. KERALA AGRO MACHINERY CORPORATION LTD.,
ATHANI, ERNAKULAM, REPRESENTED BY ITS
MANAGING DIRECTOR.

2. STATE OF KERALA, REP.BY SECRETARY,
AGRICULTURE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

(ADDL.R2 IMPLEADED AS PER ORDER IN I.A.16278/2006 DTD.27.11.2006)

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 29003 of 2005

Dated this the 27th day of November, 2006

JUDGMENT

The petitioner was appointed provisionally as Accountant in the first respondent-Corporation from 1.1.1997 to 31.12.1998 through Employment Exchange. As per Ext.P3 (G.O. dated 13.10.1999), the physically handicapped (temporary) employees engaged through Employment Exchanges during the period from 1.1.1997 to 14.8.1998 and ousted from service on account of termination of vacancies or otherwise would be reappointed and allowed to continue until further orders. In paragraph-5 of Ext.P3, which is the relevant portion applicable to the facts of this case, Government ordered as follows:

> The question as to whether the services of the physically handicapped employees who have put in similar provisional services in Public Sector Undertakings, Local Bodies, Autonomous bodies and Institutions under Co-operative Sector during the period from 1.1.1997 to 14.8.1998 should be regularised or not can be decided by these bodies themselves taking into consideration the interest of the organisations, and to that extent permissive sanction is also granted."

2. The first respondent is a public sector undertaking. Taking

note of the freedom given to it vide Ext.P3 issued by the second additional respondent, it was decided in a meeting of the Board of Directors of the first respondent that the petitioner will be given the benefit of regularisation of her services from 1.7.2000. The petitioner did not feel fully satisfied with the above order of the first respondent. She contended that the benefit of regularisation ought to have been granted to her with effect from 15.10.1999 which is the date of her commencement of provisional service as Accountant under the first respondent. By Ext.P6 order, the first respondent expressed its inability to accept the above contention. Thereupon this writ petition was filed seeking to quash Ext.P6.

3. During the pendency of the writ petition, the petitioner had approached the Government requesting to direct the first respondent to regularise her service with effect from 15.10.1999. Government passed Ext.R1(a) order dated 28.11.2005 informing the petitioner that her request was liable to be rejected. The petitioner challenges Ext.R1 (a) order also, copy of which is produced as Ext.P7 along with the application to amend this W.P.(C).

4. In the counter affidavit filed by the first respondent, it is stated that the question as to whether the services of the physically handicapped employees who had put in provisional services in public

sector undertaking etc. during the period from 1.1.1997 to 14.8.1998 need to be regularised or not was left to be considered by the institutions concerned and therefore Ext.P3 G.O. can be implemented with such modifications as felt suitable to the concerned organisation. An element of discretion is vested in the public sector undertakings either to extend the benefit of Ext.P3 order or not all. Even if the public sector undertaking decides to extend the benefit of Ext.P3, it is still open to it to choose the date from which the said benefit need be granted. The counter affidavit further says that the practice hitherto followed by the first respondent was to regularise the provisional service with prospective effect only, and hence, there cannot be a different order in the case of the petitioner alone. The reason for adopting such a course of action is also stated in the counter affidavit. In paragraph 6, it is stated inter alia that if the provisional service of the petitioner is regularised with retrospective effect, the respondent would be compelled to reopen the cases of other employees. In the interest of the organisation also, the services of the petitioner can be regularised with effect from 1.7.2000 only.

5. This Court cannot brush aside the reasons highlighted by the respondent, as irrelevant or arbitrary. I am not able to accept the contention of the petitioner that the respondent does not have the

freedom to choose a date, for granting the benefit of regularisation to the petitioner. Ext.P3 order cannot be imposed on the public sector undertakings contrary to the intention of the maker of it. The public sector undertakings have been given the discretion to adopt or not to adopt the method followed by the government. The choice is left with the public sector undertaking to implement or not to implement Ext.P3. It implies that freedom is there to choose the date of regularisation also. There is nothing in Ext.P3 to indicate that the Government wanted the regularisation to be given effect to from a particular date. Hence the relief prayed for by the petitioner cannot be granted.

The writ Petition is dismissed.

K.K.DENESAN, JUDGE

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